IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.481 of 2001

Reserved on 16.5.2007

Date of decision 11.6.2007

Smt.Sita Devi and ors. Petitioners

Vs.

Branch Manager, PNB and ors. Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioners: Mr. Pawan Gautam & Mr.Navlesh Verma, Advocates.

For the Respondents : Mr. Ajay Kumar, Advocate, for respondent No.1.

Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Ms.Meenakshi Sharma, Dy. Advocate Generals, for respondent No.2.

Mr.Y.P.S.Dhaulta, Central Govt. counsel for Respondents No.3 and 4.

Mr. B.N.Sharma, Advocate, for respondents no.5 and 6.

Rajiv Sharma,J.

By way of this petition the petitioners are seeking the following reliefs:

i) Allow the petition with costs;

ii) Quash the impugned orders Annexure P-7, Annexure P-8, Annexure P-10 and Annexure P-11;

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[1] Whether reporter of local papers are allowed to see the judgment ? yes.

iii) Issue a writ in the nature of mandamus directing the respondents not to effect any recovery.

iv) Issue a writ in the nature of mandamus directing the respondents to sanction/release the family pension to the petitioners with effect from 16.7.1999 including interest @ 18% per annum on the arrears of pension till the date of realization.

v) Direct the registration of an F.I.R. against the official of respondent No.1 for misappropriation of Istri dhan of petitioner No.1, and /or

vi) Pass such other order or directions which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of this case, including qua the interim relief for stay from recovery from the petitioners.

The brief facts necessary for the adjudication of this petition are that the petitioner No.1 is the widow of Sh.Bhup Singh and petitioners No.2 and 3 are the sons of petitioner No.1. Late Shri Bhup Singh was serving in the Punjab Police Constabulary and on re-organisation with effect from 1.1.1966 his services were allocated to the State of Haryana. Shri Bhup Singh retired on 31.8.1985 while on the strength of 5th Battalion of Haryana Armed Police and was sanctioned pension.

The petitioner No.1 married Sh.Bhup Singh on 1.1.1975. Sh.Bhup Singh died on 15.7.1999 leaving behind petitioner and two sons. The respondent No.1 bank sent a communication to the respondent No.4 on 6.10.1999 for issuing fresh PPO order in favour of the petitioners. The respondent No.1 bank along with the aforesaid communication had sent the necessary documents for consideration to the respondent No.4. In sequel to the communication dated 6.10.1999 the Senior Accounts Officer of respondent No.4 has taken up the matter with respondent No.5 on

13.1.2000 requesting him to expedite the matter. The respondent No.4 sent a letter to respondent No.3 on 28.2.2000 apprising him that the petitioner was not entitled to get the pension under the Family Pension Rules. In the meantime, the petitioner was called upon by the Manager of respondent No.1 bank to deposit a sum of Rs.81,200/- vide communication dated 17.11.2000. The respondent No.4 has sent a communication to the petitioner on 5.2.2001 stating therein that on the basis of the earlier communications dated 24.1.2000 and 28.2.2000, she was not entitled for family pension being not legally wedded to Sh. Bhup Singh. The copy of letter dated 24.1.2000 sent by respondent No.5 to respondent No.4 is placed on record vide Annexure R-3. The petitioner was called upon by the Senior Manager of respondent No.1 bank vide his letter dated 29.3.2001 to deposit the balance amount of Rs.81,200/-.

Mr.Pawan Gautam, learned counsel appearing on behalf of the petitioner had argued that petitioners No.2 and 3 were entitled to get the family pension after the demise of Sh.Bhup Singh on 15.7.1999. He further submitted that respondent No.1 bank could not effect any recoveries from the petitioners without issuing any show cause notice. Mr.Ajay Kumar, learned counsel appearing on behalf of respondent No.1 bank had submitted that since the petitioner's wife was not entitled to any family pension after the demise of Sh.Bhup Singh, the recoveries have been effected in accordance with law on the basis of Annexure P-5 dated 6.10.1999. Mr.Y.P.S.Dhaulta, learned counsel appearing on behalf of respondents No.3 and 4 submitted that the matter was taken up with respondent No.5 in right earnest, but the respondent No.5 has informed them that since the petitioner is not the legally wedded wife of Sh.Bhup Singh she is not entitled to family pension. Mr.B.N.Sharma, learned counsel appearing on behalf of respondents No.5 and 6 has submitted

that since the petitioner was not legally wedded wife of Sh.Bhup Singh is not entitled to family pension.

I have heard the learned counsels for the parties and have gone through the record carefully.

The position with regard to family pension after the demise of Sh.Bhup Singh on 15.7.1999 is to be viewed in accordance with the C.C.S. Pension Rules, 1972. The necessary instructions have been issued by the G.I. Department of P & P.W., O.M.No.43/4/95-p and P.W.(G), dated the 30th October, 1995 i.e. instruction No.18 below the Rule 54 of CCS (Pension) Rules, 1972 which reads as under :

"(18) **Family pension is admissible also to children from the void or viodable marriage**.- Attention is invited to provisions contained in Rule 54 (8) of CCS (Pension)Rules, 1972 and decisions thereunder on regulation of amount of family pension payable. This Department has been receiving references from Ministries/Departments seeking advice on the question of admissibility of family pension to children of a deceased Government servant/pensioner from a wife whose marriage with the said Government servant/pensioner would be voidable or held void under the provisions of Hindu Marriage Act.

2. The matter regarding grant of pensionary benefits to such children has been examined in consultation with the Ministry of law.

3. In view of the fact that Section 16 of the Hindu Marriage Act, 1955 as amended by Hindu Marriage Laws (Amendment) Act states "notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born before or after the commencement of Marriage Law (Amendment)Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this Act, and whether or not the marriage is held to be void otherwise than on a petition under the Act."

4. The rights of such children require to be protected and will accrue accordingly. It is therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriages when their turn comes in accordance with Rule 54(8). It may be noted that they will have no claim whatsoever to

receive family pension as long as the legally wedded wife is the recipient of the same."

It is thus evident that even though the petitioner No.1 may not be entitled to family pension but petitioners No.2 and 3 were entitled to the family pension upto the age of 25 years. The respondents No.5 and 6 have also stated in their reply that after the death of his wife only sons can receive family pension in accordance with the rules. The details of the children was with the respondents, but despite that no steps were taken to release the family pension in their favour. The Hon'ble Supreme Court in **Bakulabai and another vs. Ganga Ram and another**, (1988)1 SCC 537 has held under :

" The other findings of the Magistrate on the disputed question of fact were recorded after a full consideration of the evidence and should have been left undisputed in revision. No error of law appears to have been discovered in his judgment and so the revisional courts were not justified in making a reassessment of the evidence and substitute their own views for those of the Magistrate.(See Pathumma v. Mushammad). Besides holding that the respondent had married the appellant, the Magistrate categorically said that the appellant and the respondent lived together as husband and wife for a number of years and appellant 2 Maroti was their child. If, as a matter of fact, a marriage although ineffective in the eye of law, took place between appellant 1 and respondent 1, the status of the boy must be held to be of a legitimate son on account of Section 16(1) of the Hindu Marriage Act, 1955, which reads as follows :

> 16(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws(Amendment) Act,1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

Even if the factum of marriage of this mother is ignored he must be treated as an illegitimate child of the respondent on the basis of the findings of the Judicial Magistrate and is entitled to relief by reason of clauses (b) and (c) of Section 125(1) of the Code specifically referring to an illegitimate child.

We, therefore, hold that the order of the Judicial Magistrate allowing the maintenance to appellant 2 was correctly passed."

A Division Bench of Andhra Pradesh High Court has held in ***Rasaka Surya Prakasharao and others Vs. Rasala Venkateswararao and others***, 1993 (1) HLR as under:

> **"From the principles enunciated in the various decisions discussed above, it is quite clear that even prior to the advent of S. 16 of the Hindu Marriage Act, both as per the Shastraic and textual law as well as the decisions of the highest courts, the illegitimate son of a Sudra is entitled to enforce a partition after the father's death. He is entitled to the rights of survivorship as he becomes a coparcener with the legitimate son. The decisions have held that he is a member of the family and that he has status as a son and by virtue of that he is entitled to the right of survivorship. Section 16 of the Hindu Marriage Act has conferred on him the status of a legitimate son and his other pre-existing rights are, in no way, curtailed. After the 1976 amendment of section 16, the benefits of section 16 are enlarged and such benefits are also conferred on a son of a marriage which is void under the provisions of the Hindu Marriage Act, whether a decree of nullity is passed or not, such a son becomes a legitimate son. Such a child is also entitled to rights of succession under the Hindu Succession Act. A child of void marriage is related to its parents within the meaning of S. 3 (1) (j) of the Hindu Succession Act by virtue of S. 16 of the Hindu Marriage Act. Proviso to Section3 (1) (j) must be confined to those children who are not clothed with legitimacy under S. 16 of the Hindu Marriage Act. In conclusion, we hold that by virtue of S. 16 (1) of the Hindu Marriage Act, as amended in 1976, the illegitimate son can be equated with his natural sons and treated as coparceners for the properties held by the father whether the property be originally joint family property or not. The only limitation is that during the lifetime of the father, the illegitimate son of a void marriage is not entitled to seek a partition. He can seek a partition only after the death of his father."**

The Hon'ble Supreme Court in ***Rameshwari Devi Vs. State of Bihar and others***, (2002) 2 SCC 431 has held that the children born out of the second marriage, according to the Hindu Marriage Act, 1956 were legitimate though the marriage itself was void. Their Lordships of the Hon'ble Supreme Court have held as under:

> **"But then it is not necessary for us to consider if NarainLal could have been charged of misconduct having contracted a second marriage when his first wife was living as no disciplinary proceedings were held against him during his lifetime. In the present case, we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long drawn affair. Doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. Decision has to be taken in a bona fide reasonable and rational manner. In the present case an inquiry was held which cannot be termed as sham. Result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does arise, therefore, that marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as legal. Of course, when there is a charge of bigamy under Section 494 IPC strict proof of solemnization of the second marriage with due observance of rituals and ceremonies has been insisted upon.**

> **It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which are governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment .**

The petitioner had solemnized the marriage with Sh. Bhup Singh in accordance with the Hindu rites and the entry has also been recorded in the Pariwar Register where the petitioner has been shown as the wife of Shri. Bhup Singh. The entries of the petitioners No.2 and 3 as sons of Shri Bhup Singh are also recorded in the birth certificate. In view of the law laid down by the Hon'ble apex court, the petitioners No.2 and 3 are entitled to get family pension.

It was expected from the respondents to work out the family pension payable to the petitioners No.2 and 3 promptly. The petitioner had been making earnest affords to get the family pension, but the same has been denied to her and her sons without due application of mind. The

Hon'ble Supreme Court has held in *State of Kerala and others Vs. M. Padmanabhan Nair*, 1985 (1) SCC 429 that the pension should be paid promptly and if the Government fails to do so it is liable to pay penal interest to the petitioner. Their Lordships of the Hon'ble Supreme Court have held as under:

> **"Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (non liability certificate from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the follow day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.**
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> **Unfortunately such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross-objections in the High Court it would not be proper for us to enhance the rate of 12 per cent per annum which we were otherwise inclined to grant."**

The Hon'ble Supreme Court in ***Dr. Uma Agarwal Vs. State of U.P. and another,*** 1993 (1) SCC 438 has held that the pension is not a bounty but the right of retired employee and the government is obliged to initiate

the process for payment according to the time schedule prescribed in the Departmental Rules. Their Lordships of the Hon'ble Supreme Court have held as under:

> **"We may in this connection also refer to FR 58 which relates to "preparation of pension papers". It states that:**
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> > **"every Head of Office shall undertake the work of preparation of pension papers in Form 7 two years before the date on which the government servant is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier."**
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> **FR 59 deals with the "stages for the completion of pension papers". Sub-clause (1) (a) bears the heading, the first stage, and refers to the verification of service details. There are five parts in this sub-clause. Sub-clause (1) (b) refers to the second stage, namely, making good the omissions in the service book. Sub-clause 1(b) (ii) is important and it states very clearly as follows:**
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> > **"Every effort shall be made to complete the verification of service, as in clause (a) and to make good omissions, imperfections or deficiencies referred to in sub-clause (i) of this clause. Any omission, imperfections or deficiencies including the portion of service shown as unverified in the service book which it has not been possible to verifying accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the book."**
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> **This directive in the Rules is obviously intended to see that once the period is quite close to 10 months before the retirement of an employee, further time is not to be wasted in verifying the data which it has not been possible to verify by following the procedure in sub-clause (1) (a) of FR 59. Sub clause (1) (c) refers to the third stage and it says that at least 10 months before the date of retirement, the Head Office shall take various steps by issuing a certificate to the government servant and the officer can offer his remarks and thereafter, he**

shall be furnished Form 4 and 5 which he has to fill up and send to the Head Office at least 8 months before the date of retirement. FR 60 refers to "completion of pension papers" in Part 1 of Form 7 at least 6 months before the date of retirement of the government servant. FR 61 deals with the "forwarding of pension papers to Accounts Officer" in Form 5 and 7 with a covering letter in Form 8 along with the service book duly completed, up to date, and other documents. This has to be done at least 6 months before the date of retirement. Rule 63 refers to recovery of amounts due by the government servant and the particulars in this behalf are to be sent at least 2 months before the date of retirement, so that the same could be recovered from the gratuity. FR 64 deals with provisional pension. FR 65 requires the Accounts Officer to assess the amount of pension and gratuity at least one month before the date of retirement. FR 68 requires interest to be paid on delayed payment of gratuity. As already stated, in cases of delayed payment of pension, this Court has levied interest at 12% per annum in several cases.

Now as far as recoveries effected from the pension of late Sh.Bhup Singh are concerned, the same were not in accordance with law. The gist of the reply of respondents No.3 and 4 is that so far as the recovery was concerned the same was effected in pursuance to respondent No.4 letter dated 6.10.1999. The respondents have not placed on record any document whereby the petitioner was called upon why the recoveries be not effected from the pension of late Sh.Bhup Singh on the basis of letter dated 30.11.1999. If there was any wrong fixation in that eventuality the affected parties were to be heard before effecting recoveries. The respondent Bank had already effected recovery of Rs. 58,163/- which was wrongly remitted to the State of Haryana and for deducting the remaining amount the petitioner was issued letter on 29.3.2001. It is not the case of the respondents for effecting recoveries from the pension of late Shri Bhup Singh amounting to Rs.1,50,771/- that Bhup Singh had made any mis-

representation or concealed any fact. The pension was fixed by the respondents themselves and the same was received by Sh.Bhup Singh and he has died on 15.7.1999. The action of respondent No.1 Bank of adjusting the same as mentioned in the reply from the fixed deposit on the basis of Annexures R-4 and R-5 is also bad in law. The respondent No.1 has taken a unilateral decision without considering the true import of the undertaking.

The Hon'ble Supreme Court has held in Lakshmi Narayan Mukhopadhyam Vs. Union of India and others, (2002) 10 SCC 3709 as under:

> **"Learned counsel for the appellant has submitted that the Tribunal has erred in law inasmuch as this amount was arrived at by the respondent without giving opportunity to the appellant. On the other hand learned counsel for the Union of India has contended that by letter dated 12.6.1991 the appellant was asked to explain and thereafter, the Divisional Railway Manager (Engg.) by letter dated 24.11.1992 i.e. after the voluntary retirement of the appellant, directed that the amount should be recovered from the amount of gratuity of the appellant.**
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> **There is nothing in the letter to show that this amount was arrived at after giving opportunity to the appellant or that the amount due was quantified by the date of retirement. The alleged letter dated 12.61991 giving show-cause notice has not been brought on record or referred to in the impugned order. Moreover, what guidelines were not followed by the appellant, was also not indicated in the letter. We, therefore, hold that in view of the aforesaid circumstances, the impugned order of the Tribunal dated 24.2.1995 in OA No.1170 of 1993 is not sustainable and is accordingly set aside. We direct the respondents to pay the amount within two months. Learned counsel for the appellant prays for interest at the rate of 12%."**

The upshot of the above discussion is that Annexure P-10 dated 5.2.2001 along with Annexure P-11 dated 29.3.2001 are liable to be quashed and set aside. Consequently, the writ petition is allowed. Annexure P-10 dated 5.2.2001 and Annexure P-11 dated 29.3.2001 are quashed and set aside. The respondents No.2,3,4,5 and 6 are directed to release the family pension in favour of petitioners No.2 and 3 by working out the arrears of pension with interest at the rate of 12% per annum. The respondents No.5 and 6 are also directed to refund a sum of Rs. 58,103.00 to the petitioners. It is clarified that the petitioners No.2 and 3 will be held entitled to the family pension till they had attained the age of 25 years. The compliance of the above directions be made by the respondents within a period of 8 weeks from the date of receipt of certified copy of this judgment.

The petitioners are entitled to the cost quantified at Rs.11,000/- to be paid by respondents No. 5 and 6.

June 11, 2007 **(Rajiv Sharma), J.**
Awasthi